IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.56 of 2001.
Date of decision:2.3.2007

Sanjay Kumar ….**Petitioner**

Versus

Union of India & Others ….**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioners: **Mr.Bhuvnesh Sharma, Advocate.**

For the Respondents: **Mr.Sandeep Sharma, Assistant Solicitor General of India.**

Dev Darshan Sud, J.

The present writ petition was filed by Shri Sanjay Kumar through his father and natural guardian Shri Gupat Ram. On his death, the petition was being persued by Shri Kashmir Singh, brother of the petitioner. The guardian was pursuing the litigation on behalf of the petitioner since the petitioner was suffering from Schizophrenia and unable to look after his interest.

Brief facts of the case are that the petitioner was enrolled in the Indian Navy on 3.7.1990 as SEA-I. According to him, he was medically fit at the time when he joined service and no physical or mental disability was found in the petitioner. He was subjected to a thorough medical examination. Petitioner submits that

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[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

after enrollment in the Indian Navy, and completing his training, he served at Bombay, Cochin, Dubai and Goa. During his service, he became mentally unfit and was admitted in a Military Hospital Kirkee at Pune, where he was treated for Schizophrenia. He was in hospital w.e.f. 3.1.1996 to 23.5.1996. The petitioner being mentally unfit was boarded out of the Navy. The petitioner applied for disability pension, which was rejected by the respondents vide Annexure-P2 on the ground that it is not attributable to Military Service, does not fulfill the conditions namely; that it is existed before or gross during military service and has been or remains aggravated hereby, is attributable to/aggravated by service assessed at less than 20% for years.

Records of the petition show that the writ petition was admitted on 26.2.2001. On 27.6.2002, this Court noticed that no reply had been filed by the respondents. As a matter of indulgence, an opportunity was given to the respondents to file the reply on or before 31.8.2002. On 18.9.2002, again it was noticed that the records were still not complete. The matter remained pending and was taken up for hearing on 1.12.2006 when it was again noticed that no reply etc. had been filed, another opportunity was granted to the respondents to file the reply. Thereafter, the matter was taken up on two different occasions, but still no reply was filed. Finally, the matter was heard on

2.3.2007. Record shows that no reply to the writ petition has been filed.

The allegations of the petitioner to the effect that he was suffering from Schizophrenia have remained un-rebutted. Rejection letter placed on record by the petitioner, does not in any manner establish that the petitioner had contacted a disease before entering military service. Repeated opportunities having been given to the respondents to file the reply for a period of more than five years, have remained unheeded. In these circumstances, the submissions which have been made in the writ petition have to be accepted. The rejection Annexure P-2 is mechanical and does not show any application of mind. This Court while dealing with the grant of disability pension in ***CWP No.742 of 2003, Titled: Santosh Kumar vs. Union of India & Ors.*** along with other connected petitions, has specifically held:

> "After giving careful consideration to the rules and regulations and the authorities of the apex Court, we hold that to be entitled to disability pension, it must be established that the disability has occurred due to a would injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated thereby."

In ***CWP No.742 of 2003***, this Court was seized of a case where the petitioner was afflicted with Schizophrenia. It was noticed that at the time when the petitioner therein had joined the army there was no note

that he was suffering from Schizophrenia nor was there any opinion of the doctor that this existed prior to enrollment, but could not be discovered. In such circumstances and also considering the fact that the petitioner therein had served in different areas which was subjected to constant threat of terrorists etc., it was held, that the petitioner was entitled to disability pension.

In the present case also, I find from the pleadings that the petitioner has averred that at the time when he joined service, he was physically and mentally fit. It was only in 1996 that he had to undergo treatment for Schizophrenia and at that particular point of time; the petitioner was admittedly serving in Indian Navy. It was because of this disease, that he was invalided by an order dated 25th June, 1996. There is nothing on the record to show that the petitioner had contacted this disease before joining the Indian Navy. Coupled with the fact that for five long years the respondents have not filed the reply nor placed on record any material to show that the disease neither was attributable to nor aggravated by military service, allegations made by the petitioner have to be accepted.

For the foregoing reasons and circumstances, Annexure P-2 is quashed and set aside and a direction issued to the respondents to grant disability pension to the petitioner from the date he was discharged from the

Navy alongwith interest at the rate of 7% per annum. There shall be no order as to costs.

March 2, 2006 **(Dev Darshan Sud)**
(aks) **Judge.**